

IC 6-2.5-8

Chapter 8. Registration

IC 6-2.5-8-1

Registered retail merchant's certificate

Sec. 1. (a) A retail merchant may not make a retail transaction in Indiana, unless he has applied for a registered retail merchant's certificate.

(b) A retail merchant may obtain a registered retail merchant's certificate by filing an application with the department and paying a registration fee of twenty-five dollars (\$25) for each place of business listed on the application. The retail merchant shall also provide such security for payment of the tax as the department may require under IC 6-2.5-6-12.

(c) The retail merchant shall list on the application the location (including the township) of each place of business where he makes retail transactions. However, if the retail merchant does not have a fixed place of business, he shall list his residence as his place of business. In addition, a public utility may list only its principal Indiana office as its place of business for sales of public utility commodities or service, but the utility must also list on the application the places of business where it makes retail transactions other than sales of public utility commodities or service.

(d) Upon receiving a proper application, the correct fee, and the security for payment, if required, the department shall issue to the retail merchant a separate registered retail merchant's certificate for each place of business listed on the application. Each certificate shall bear a serial number and the location of the place of business for which it is issued.

(e) If a retail merchant intends to make retail transactions during a calendar year at a new Indiana place of business, he must file a supplemental application and pay the fee for that place of business.

(f) A retail merchant engaged in business in Indiana as defined in IC 6-2.5-3-1(c) who makes retail transactions that are only subject to the use tax must obtain a registered retail merchant's certificate before making those transactions. The retail merchant may obtain the certificate by following the same procedure as a retail merchant under subsections (b) and (c), except that the retail merchant must also include on the application:

- (1) the names and addresses of the retail merchant's principal employees, agents, or representatives who engage in Indiana in the solicitation or negotiation of the retail transactions;
- (2) the location of all of the retail merchant's places of business in Indiana, including offices and distribution houses; and
- (3) any other information that the department requests.

(g) The department may permit an out-of-state retail merchant to collect the use tax. However, before the out-of-state retail merchant may collect the tax, he must obtain a registered retail merchant's certificate in the manner provided by this section. Upon receiving the certificate, the out-of-state retail merchant becomes subject to the

same conditions and duties as an Indiana retail merchant and must then collect the use tax due on all sales of tangible personal property that he knows is intended for use in Indiana.

(h) The department shall submit to the township assessor before July 15 of each year:

(1) the name of each retail merchant that has newly obtained a registered retail merchant's certificate between March 2 of the preceding year and March 1 of the current year for a place of business located in the township; and

(2) the address of each place of business of the taxpayer in the township.

As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1982, P.L.50, SEC.1; P.L.42-1984, SEC.4; P.L.57-1985, SEC.2; P.L.2-1997, SEC.23.

IC 6-2.5-8-2 Repealed

(Repealed by P.L.158-1986, SEC.8.)

IC 6-2.5-8-3

Manufacturer's or wholesaler's certificate

Sec. 3. (a) A manufacturer or wholesaler may register with the department as a purchaser of property in exempt transactions. A manufacturer or wholesaler wishing to register must apply in the same manner and pay the same fee as a retail merchant under section 1 of this chapter.

(b) Upon receiving the application and fee, the department may issue a manufacturer's or wholesaler's certificate for each place of business listed on the application. Each certificate shall contain a serial number and the location of the place of business for which it is issued.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-8-4

Exempt organizations; certificate

Sec. 4. (a) An organization, exempt from the state gross retail tax under IC 6-2.5-5-21, IC 6-2.5-5-25, or IC 6-2.5-5-26, may register with the department as a purchaser of property in exempt transactions. An exempt organization wishing to register must file an application listing its principal location, but the organization is not required to pay the fee.

(b) Upon receiving the application, the department may issue an exempt organization certificate containing a serial number and the principal location of the exempt organization.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-8-5

Duration of certificate

Sec. 5. A certificate issued under section 1, 3, or 4 of this chapter is valid so long as the business or exempt organization is in existence.

As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1982, P.L.50, SEC.2.

IC 6-2.5-8-6

Outstanding tax warrants; prohibition

Sec. 6. The department may not issue a certificate under this chapter, if that issuance is prohibited under IC 6-8.1-3-16.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.332-1989(ss), SEC.15.

IC 6-2.5-8-7

Revocation of certificate; notice; reinstatement

Sec. 7. (a) The department may, for good cause, revoke a certificate issued under section 1, 3, or 4 of this chapter. However, the department must give the certificate holder at least five (5) days notice before it revokes the certificate under this subsection.

(b) The department shall revoke a certificate issued under section 1, 3, or 4 of this chapter if, for a period of three (3) years, the certificate holder fails to:

- (1) file the returns required by IC 6-2.5-6-1; or
- (2) report the collection of any state gross retail or use tax on the returns filed under IC 6-2.5-6-1.

However, the department must give the certificate holder at least five (5) days notice before it revokes the certificate.

(c) The department may, for good cause, revoke a certificate issued under section 1 of this chapter after at least five (5) days notice to the certificate holder if:

- (1) the certificate holder is subject to an innkeeper's tax under IC 6-9; and
- (2) a board, bureau, or commission established under IC 6-9 files a written statement with the department.

(d) The statement filed under subsection (c) must state that:

- (1) information obtained by the board, bureau, or commission under IC 6-8.1-7-1 indicates that the certificate holder has not complied with IC 6-9; and
- (2) the board, bureau, or commission has determined that significant harm will result to the county from the certificate holder's failure to comply with IC 6-9.

(e) The department shall revoke or suspend a certificate issued under section 1 of this chapter after at least five (5) days notice to the certificate holder if:

- (1) the certificate holder owes taxes, penalties, fines, interest, or costs due under IC 6-1.1 that remain unpaid at least sixty (60) days after the due date under IC 6-1.1; and
- (2) the treasurer of the county to which the taxes are due requests the department to revoke or suspend the certificate.

(f) The department shall reinstate a certificate suspended under subsection (e) if the taxes and any penalties due under IC 6-1.1 are paid or the county treasurer requests the department to reinstate the certificate because an agreement for the payment of taxes and any

penalties due under IC 6-1.1 has been reached to the satisfaction of the county treasurer.

As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1982, P.L.50, SEC.3; P.L.65-1988, SEC.1; P.L.46-1991, SEC.7; P.L.88-1995, SEC.10.

IC 6-2.5-8-8

Exemption certificates

Sec. 8. (a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

(b) The following are the only persons authorized to issue exemption certificates:

- (1) retail merchants, wholesalers, and manufacturers, who are registered with the department under this chapter;
- (2) organizations which are exempt from the state gross retail tax under IC 6-2.5-5-21, IC 6-2.5-5-25, or IC 6-2.5-5-26 and which are registered with the department under this chapter; and
- (3) other persons who are exempt from the state gross retail tax with respect to any part of their purchases.

(c) The department may also allow a person to issue a blanket exemption certificate to cover exempt purchases over a stated period of time. The department may impose conditions on the use of the blanket exemption certificate and restrictions on the kind or category of purchases that are exempt.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-8-8.5

Commercial printing sales

Sec. 8.5. A commercial printer is not required to collect or remit the state gross retail or use tax from a customer that has no duty to register as a retail merchant under this article, if the customer furnishes the commercial printer with a statement declaring that the tangible personal property sold by the commercial printer to the customer will be resold in the ordinary course of the customer's business without changing the form of the property.

As added by P.L.70-1993, SEC.4.

IC 6-2.5-8-9

Direct payment permit

Sec. 9. (a) A retail merchant, manufacturer, or wholesaler who is registered under this chapter may apply for a direct payment permit. The department may issue the permit subject to such conditions as it deems reasonable. A permit issued under this subsection does not expire and is valid unless revoked under subsection (c).

(b) A person who possesses a direct payment permit may, at the

time of a retail transaction, issue a direct payment certificate to a retail merchant instead of paying the state gross retail or use tax to that merchant. If the person issues a direct payment certificate, the person must then pay the tax on that purchase directly to the department. A retail merchant who receives a direct payment certificate has no duty to collect or remit the state gross retail or use tax on that transaction.

(c) The department may revoke a direct payment certificate, without cause, at any time.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.87-1989, SEC.1.

IC 6-2.5-8-10

Nexus; out-of-state vendors; obligation to collect tax

Sec. 10. (a) A person that:

- (1) makes retail transactions from outside Indiana to a destination in Indiana;
- (2) does not maintain a place of business in Indiana; and
- (3) either:
 - (A) engages in the regular or systematic soliciting of retail transactions from potential customers in Indiana;
 - (B) enters into a contract to provide property or services to an agency (as defined in IC 4-13-2-1) or a state educational institution (as defined in IC 20-12-0.5-1);
 - (C) agrees to sell property or services to an agency (as defined in IC 4-13-2-1) or a state educational institution (as defined in IC 20-12-0.5-1); or
 - (D) is closely related to another person that maintains a place of business in Indiana or is described in clause (A), (B), or (C);

shall file an application for a retail merchant's certificate under this chapter and collect and remit tax as provided in this article. Conduct described in subdivision (3)(B) and (3)(C) occurring after June 30, 2003, constitutes consent to be treated under this article as if the person has a place of business in Indiana or is engaging in conduct described in subdivision (3)(A), including the provisions of this article that require a person to collect and remit tax under this article.

(b) A person is rebuttably presumed to be engaging in the regular or systematic soliciting of retail transactions from potential customers in Indiana if the person does any of the following:

- (1) Distributes catalogs, periodicals, advertising flyers, or other written solicitations of business to potential customers in Indiana, regardless of whether the distribution is by mail or otherwise and without regard to the place from which the distribution originated or in which the materials were prepared.
- (2) Displays advertisements on billboards or displays other outdoor advertisements in Indiana.
- (3) Advertises in newspapers published in Indiana.
- (4) Advertises in trade journals or other periodicals that circulate primarily in Indiana.

(5) Advertises in Indiana editions of a national or regional publication or a limited regional edition in which Indiana is included as part of a broader regional or national publication if the advertisements are not placed in other geographically defined editions of the same issue of the same publication.

(6) Advertises in editions of regional or national publications that are not by the contents of the editions geographically targeted to Indiana but that are sold over the counter in Indiana or by subscription to Indiana residents.

(7) Broadcasts on a radio or television station located in Indiana.

(8) Makes any other solicitation by telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

(c) A person not maintaining a place of business in Indiana is considered to be engaged in the regular or systematic soliciting of retail transactions from potential customers in Indiana if the person engages in any of the activities described in subsection (b) and:

(1) makes at least one hundred (100) retail transactions from outside Indiana to destinations in Indiana during a period of twelve (12) consecutive months; or

(2) makes at least ten (10) retail transactions totaling more than one hundred thousand dollars (\$100,000) from outside Indiana to destinations in Indiana during a period of twelve (12) consecutive months.

(d) Subject to subsection (e), the location in or outside Indiana of vendors that:

(1) are independent of a person that is soliciting customers in Indiana; and

(2) provide products or services to the person in connection with the person's solicitation of customers in Indiana:

(A) including products and services such as creation of copy, printing, distribution, and recording; but

(B) excluding:

(i) delivery of goods;

(ii) billing or invoicing for the sale of goods;

(iii) providing repairs of goods;

(iv) assembling or setting up goods for use by the purchaser; or

(v) accepting returns of unwanted or damaged goods;

is not to be taken into account in the determination of whether the person is required to collect use tax under this section.

(e) Subsection (d) does not apply if the person soliciting orders is closely related to the vendor.

(f) For purposes of subsections (a) and (e), a person is closely related to another person if:

(1) the two (2) persons:

(A) use an identical or a substantially similar name, trademark, or good will to develop, promote, or maintain sales;

- (B) pay for each other's services in whole or in part contingent on the volume or value of sales; or
- (C) share a common business plan or substantially coordinate their business plans; and
- (2) either:
 - (A) one (1) or both of the persons are corporations and:
 - (i) one (1) person; and
 - (ii) any other person related to the person in a manner that would require an attribution of stock from the corporation to the person or from the person to the corporation under the attribution rules of Section 318 of the Internal Revenue Code;
 own directly, indirectly, beneficially, or constructively at least fifty percent (50%) of the value of the corporation's outstanding stock;
 - (B) both entities are corporations and an individual stockholder and the members of the stockholder's family (as defined in Section 318 of the Internal Revenue Code) own directly, indirectly, beneficially, or constructively a total of at least fifty percent (50%) of the value of both entities' outstanding stock; or
 - (C) one (1) or both persons are limited liability companies, partnerships, limited liability partnerships, estates, or trusts, and their members, partners, or beneficiaries own directly, indirectly, beneficially, or constructively a total of at least fifty percent (50%) of the profits, capital, stock, or value of one (1) or both persons.

As added by P.L.45-1992, SEC.1. Amended by P.L.254-2003, SEC.5; P.L.81-2004, SEC.8.

IC 6-2.5-8-11

Commercial printing contracts

Sec. 11. Notwithstanding any other provision of this article, the following shall not cause a person that has contracted with a commercial printer for printing to have a duty to register as a retail merchant or to collect or remit the state gross retail or use tax imposed by this article:

- (1) The ownership or leasing by that person of tangible or intangible property located at the Indiana premises of the commercial printer.
- (2) The sale by that person of property of any kind produced at and shipped or distributed from the Indiana premises of the commercial printer.
- (3) The activities of any kind performed by or on behalf of that person at the Indiana premises of the commercial printer.
- (4) The activities of any kind performed by the commercial printer in Indiana for or on behalf of that person.

As added by P.L.70-1993, SEC.5.

IC 6-2.5-8-12

Contract with call center operator; effect on duty to collect tax

Sec. 12. (a) Notwithstanding any other provision of this article, the following do not cause a person that has contracted with a call center operator for a telephone service to have a duty to register as a retail merchant or to collect or remit the state gross retail or use tax imposed by this article:

(1) The ownership or leasing by the person of tangible or intangible property that is:

(A) located at the Indiana premises of the call center operator;

(B) used to provide or assist directly with the provision of a telephone service as described in subsection (c); and

(C) not held for sale, shipment, or distribution in response to orders received as a result of a telephone service provided by the call center operator.

(2) The activities of any kind performed by or on behalf of the person at the Indiana premises of the call center operator.

(3) The activities of any kind performed by the call center operator in Indiana for or on behalf of the person.

(b) Tangible or intangible property that is:

(1) owned or leased by a person that has contracted with a call center operator for a telephone service;

(2) located at the premises of the call center operator;

(3) used to provide or assist directly with the provision of a telephone service as described in subsection (c); and

(4) not held for sale, shipment, or distribution in response to orders received as a result of a telephone service provided by the call center operator;

shall not be considered to be, or to create, an office, a place of distribution, a sales location, a sample location, a warehouse, a storage place, or other place of business maintained, occupied, or used in any way by the person. For purposes of this section, a call center operator with which a person has contracted for a telephone service shall not be considered to be in any way a representative, an agent, a salesman, a canvasser, or a solicitor for the person.

(c) For purposes of this section, a telephone service includes soliciting orders by telephone, accepting orders by telephone, and making and receiving any other telephone calls.

As added by P.L.65-2003, SEC.1.